

1 LAURA E. DUFFY  
United States Attorney  
2 TOM STAHL  
Assistant U.S. Attorney  
3 Chief, Civil Division  
California State Bar No. 078291  
4 Office of the U.S. Attorney  
880 Front Street, Room 6293  
5 San Diego, California 92101-8893  
Telephone: (619) 546-7767  
6 Facsimile: (619) 546-7754  
Email: [thomas.stahl@usdoj.gov](mailto:thomas.stahl@usdoj.gov)

7 Attorneys for Defendants  
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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SERGEANT GARY A. STEIN,	)	Case No.: 12cv0816 H (BGS)
	)	
12 Plaintiff	)	SUPPLEMENTAL BRIEFING
	)	AS REQUESTED BY
13 v.	)	THE COURT
	)	
14 COLONEL C. S. DOWLING, et al.,	)	
	)	
15 Defendants.	)	
_____	)	

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17 **STATUS OF MILITARY PROCEEDINGS**

18 On April 5, 2012, the Administrative Discharge Board (Board) held a hearing and unanimously  
19 decided to recommend that Plaintiff be separated from the Marine Corps. The Board further  
20 recommended that the separation be characterized as under “other than honorable” conditions. The  
21 Findings and Recommendations of the Board are contained in the document attached as Exhibit A. The  
22 record of the hearing, including the documentary evidence considered by the Board, is voluminous and  
23 is not available to accompany this filing. The transcript of the hearing is being prepared, but is not  
24 available to accompany this filing.

25 **PROCEDURE FOLLOWING BOARD HEARING**

26 As discussed during the hearing on Plaintiff’s request for a Temporary Restraining Order held  
27 on April 4, 2012, the Board’s recommendation is not the final step in the process. The recommendation  
28 will be considered by the Commanding General, MCRD/WRR, General Daniel Yoo. Before General

1 Yoo decides what action to take on the Board's recommendation, a series of procedural steps will occur  
2 over the next two to four weeks. The process is described in Exhibit B, the Declaration of Major  
3 Christian Hur. The General has a range of options in deciding what action to take on the Board's  
4 recommendation; he can adopt, modify, or reject it. He can decrease the recommended sanctions, but  
5 cannot increase their severity. He could choose to reject the recommendation and retain the Plaintiff  
6 in the Marine Corps.

7 General Yoo's decision, if it results in Plaintiff's separation, is subject to appeal to the Board  
8 for Correction of Naval Records (BCNR). [citation] After the BCNR considers such an appeal, the  
9 decision will be final for the agency and subject to judicial review in two forums. Review under the  
10 Administrative Procedure Act, 5 U.S.C. §702, is available in the District Court, and review in the Court  
11 of Claims is available under Court of Claims Rule 56.1. Either court could address the issues raised in  
12 the challenge to the decision, make findings, and remand the matter back to the Marine Corps with  
13 instructions to reconsider Plaintiff's discharge consistent with the court's decision. If the Marine Corps,,  
14 upon reconsideration, reversed its earlier decision, Plaintiff would have remedies including  
15 reinstatement and/or back pay.

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17 DATED: April 6, 2012

Respectfully submitted,

18 LAURA E. DUFFY  
19 United States Attorney

20 s/ Tom Stahl

21 TOM STAHL  
22 Assistant U.S. Attorney  
23 Chief, Civil Division  
24 Attorneys for Defendants  
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